

Legal Department

May 2, 2014

Via Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov), and  
Fax: 202/452-3819

Mr. Robert deV. Frierson  
Secretary  
Board of Governors of the  
Federal Reserve System  
20<sup>th</sup> and C Streets, N.W.  
Washington, DC 20551

Docket No. 1409 / RIN No. 7100 AD 68:

Re: Proposed Amendments to Regulation CC – Availability of Funds and Collection of Checks

Dear Mr. deV. Frierson:

Bank of America Corporation (“Bank of America” or “Bank”) is grateful for the opportunity to provide comments on the Board of Governors of the Federal Reserve System’s (“Board”) above-referenced proposed rule to facilitate the banking industry’s ongoing transition to full electronic interbank check collection and return under Regulation CC.

Bank of America is one of the world's largest financial institutions, serving individual consumers, small businesses, middle-market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk management products and services. The company provides unmatched convenience in the United States, serving approximately 49 million consumer and small business relationships with approximately 5,100 retail banking offices and approximately 16,200 ATMs and award-winning online banking with 30 million active users and more than 15 million mobile users.

Bank of America is among the world's leading wealth management companies and is a global leader in corporate and investment banking and trading across a broad range of asset classes, serving

corporations, governments, institutions and individuals around the world. Bank of America offers industry-leading support to approximately 3 million small business owners through a suite of innovative, easy-to-use online products and services. The company serves clients through operations in more than 40 countries.

Bank of America agrees with the Board's goal of facilitating full electronic processing of checks. The statistics are impressive. Bank of America receives 99.99% of items drawn on us as images. On the return side, we send 100% of outgoing returns as images. As a depository bank, we receive 95.34% of our returns as images. Despite these high percentages, we receive more than 43,000 items each month that are returned as paper items

Bank of America participated in the ECCHO Organization led Working Group process described in the comment letter submitted by the financial services organizations ("Commenters"). The positions stated in the Commenters' letter reflect the due consideration and discussion of many industry participants who are involved in the electronic exchange of check images. Bank of America agrees with the positions set out in the Commenters' letter. We are responding separately to two issues: the §229.2 (dd) definition of Routing and Transit Numbers, an issue that is not included in the Commenters' comment letter and to support the §229.36 (f) retention of the Same Day Settlement Rule.

#### I. Definition of Routing and Transit Number

Currently the Commentary to §229.2 (dd) explains that routing numbers are those assigned to each bank by the ABA or its agent. We request an addition to this Commentary section to underscore the usefulness to the industry of the ABA list of active routing numbers as a preventive tool where retired or never issued routing numbers are deliberately introduced into the check processing system in a fraud scheme.

When a fraudster deposits a check that has a retired or made up routing number, the intent is to misdirect the check by taking advantage of the way the check processing system operates. Retired routing numbers-- and even more so made up routing numbers-- can send the check on a long journey as banks struggle to determine where the check belongs. In the meantime, the fraudster will take advantage of the Funds Availability schedule to withdraw the available funds. The depository bank bears the risk of loss while the check circulates and re-circulates in search of a paying bank.

In recent years industry tolerance for bank use of retired routing numbers has diminished the effectiveness of the ABA list, which contains only active routing numbers. (Fraudulently created routing numbers would never be on the ABA list and would always be a problem.)

Some banks have introduced internal counter measures, such as traps and screens that have at least limited value as anti-fraud tools. Bank of America understands that the industry agrees that the integrity of the ABA list of active routing numbers needs to be re-acknowledged and that support is needed for the historical process of collecting banks, including the Federal Reserve Bank, to filter out numbers not on the list.

While it is useful that the current Commentary includes a reference to the ABA assignment of numbers and the ABA agent's maintenance of the list of assigned numbers, we believe that the Commentary should be expanded to highlight the contrast between active routing numbers and those that are retired or were never issued. It could be as simple as saying: "The ABA's agent maintains the list of all active routing numbers. The list does not include retired routing numbers or those that have never been issued by the ABA."

We request that the Board reflect in its Commentary such an expanded description of the ABA list of routing numbers. This, together with industry support, should reinvigorate the type of filtering activity that occurred in the past. We do not believe that a rule change is needed; this type of addition to the Commentary should suffice.

## II. Retention of the Same Day Settlement Rule

In the proposal (12 CFR Part 229, 6680-6681) the Board highlights the value and equity of the dual-pronged policy underlying the Same Day Settlement ("SDS") rule:

The same-day settlement rule was established  
In 1994 to reduce the competitive disparity  
between the Reserve Banks and other  
presenting banks, and to balance the  
bargaining power between presenting  
banks and paying banks more equitably

The Board then outlines the 2011 proposal and discusses the 2011 comments. While noting that paper SDS rules may be anachronistic, it nonetheless recommends retaining the paper SDS rule in Regulation CC as is. We agree with the Board's position. We are concerned that eliminating a provision that reflects important policy will effectively eliminate the policy -- or at least make it more difficult to revive in future attempts at modernization.

The Board recognizes the importance of the policy as well as the challenge of modernization. The Board suggests that the future state of the SDS rule may be the retention of the policy statement in

Regulation CC, with the intent that the policy statement will provide the same outcome as the current rule – as financial institutions incorporate SDS terms in their agreements for image exchange.

The same-day settlement rule's proscription against paying banks' assessment of presentment fees, however, may continue to help balance the bargaining power between collecting banks and paying banks in entering into electronic presentment agreements. If, in the future, the Board proposes to eliminate the same-day settlement rule, it could also propose to retain this proscription in order to maintain the current balance of bargaining power, as well as reduce the competitive disparities between Reserve Banks and private-sector banks.

In our experience, paper SDS is used minimally, if at all. We see no clear, reasonable formulation for electronic SDS on the immediate horizon. Similarly unresolved are the concerns about the 2011 Federal Reserve SDS proposal (terms of agreements, fees, etc.) as reflected in Comments.

The Board requests comment on whether paying banks are continuing to receive paper checks presented for same-day settlement, and in particular requests comment on whether presenting banks that generally use electronic check-collection methods still present checks in paper form to a paying bank that has already established the capability to receive check presentments electronically. The Board also requests comment on whether it should apply the same-day settlement rule to electronic checks and, if so, how it might address the concerns of the commenters raised in connection with the 2011 proposal.

Because of the significance of the underlying policy, we support the Board's proposal to retain the Same Day Settlement rule as is in Regulation CC.

Mr. Robert deV. Frierson  
Secretary  
Board of Governors of the  
Federal Reserve System  
Page 5

### III. Conclusion

Bank of America appreciates the opportunity to comment on the proposed amendments to Regulation CC, and commends the Board's thoughtful efforts to facilitate ongoing development toward complete electronic check collection and returns in the banking industry. The amendments to Regulation CC will bring significant operational changes to the industry. We thank you for this opportunity to provide our comments. If you have any questions regarding this letter, please feel free to contact me at 980.386.5218.

Respectively submitted,

A handwritten signature in dark ink, appearing to read "Kathleen Kerrigan", followed by a horizontal line.

Kathleen Kerrigan  
Assistant General Counsel  
Bank of America